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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON

8 NATHANIEL WASHINGTON,

9 Plaintiff,

NO.

10 vs.

COMPLAINT FOR DAMAGES

11 CITY OF SEATTLE; STEPHEN
12 SMITH, JR.; ALBERT ELLIOT;
13 CLAYTON AGATE; and DOES 1 – 5,

JURY TRIAL REQUESTED

14 Defendants.

15
16 Comes now Plaintiff Nathaniel Washington, by and through his attorney
17 Breean Beggs of Troppmann & Paukert, PLLC and complains and alleges as
18 follows:
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20 **IDENTIFICATION OF THE PARTIES**

- 21 1. Plaintiff Nathaniel Washington at all times material to this action resided
22 in King County, Washington.
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- 1 2. Defendant City of Seattle, is now, and at all times herein mentioned, was
2 a municipal corporation, duly organized and existing under the laws of
3 the State of Washington with the right to sue and be sued in its own name
4 and for the acts and omissions of its agents and employees. The City
5 may be held independently or vicariously liable for the tortious conduct
6 of its officers and employees, and for its policies and practices that
7 violate federal law. Defendant City of Seattle is responsible for the
8 Seattle Police Department (SPD) and all of its officers.
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10
- 11 3. At all times material hereto, Defendant Stephen Smith, Jr. was an agent
12 and employee of the City of Seattle, who, at the time of the events
13 complained of herein, was acting within the course and scope of his
14 employment by the City and under the color of state law. Defendant
15 Smith is named in his individual and representative capacity.
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- 17 4. At all times material hereto, Defendant Albert Elliot was an agent and
18 employee of the City of Seattle, who, at the time of the events
19 complained of herein, was acting within the course and scope of his
20 employment by the City and under the color of state law. Defendant
21 Elliot is named in his individual and representative capacity.
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- 1 5. At all times material hereto, Defendant Clayton Agate was an agent and
2 employee of the City of Seattle, who, at the time of the events
3 complained of herein, was acting within the course and scope of his
4 employment by the City and under the color of state law. Defendant
5 Agate is named in his individual and representative capacity.
6
- 7 6. Defendants Does 1 through 5, at all times material to this litigation, were
8 commissioned or deputized City employees acting under color of state
9 law and in the employ and under the supervision of Defendant City of
10 Seattle. Plaintiff prays leave to amend this pleading, to set forth the
11 names and capacities of named Defendants 1-5, whose true names are
12 unknown, are persons or entities that may be responsible for the injuries
13 suffered by the Plaintiff.
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16 JURISDICTION AND VENUE

- 17 7. All acts complained of occurred in the Western District of Washington
18 State.
19
- 20 8. Venue is proper in the United States District Court for the Western
21 District of Washington.
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- 1 9. Jurisdiction is proper in the United States District Court pursuant to, but
2 not limited to, Title 42, United States Code §§ 1983 & 1988; Title 28
3 USC §1331; 28 USC §1343(a)(3); 28 USC §1367.
4
5 10. This court has personal and subject matter jurisdiction.

6 NOTICE OF CLAIM

- 7 11. On June 28, 2013 Plaintiff properly presented a notice of claim for
8 damages to the City of Seattle pursuant to RCW 4.96 *et seq.*
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10 12. More that 60 days have elapsed since Plaintiff presented the claim for
11 damages to the City of Seattle. The City of Seattle has not responded to
12 the claim.

13 BACKGROUND FACTS

- 14
15 13. On July 4, 2011, at approximately two (2:00) a.m., on the sidewalk/street
16 near the Club Habana Sodo at or near 2942 1st Ave S in the City of
17 Seattle, a hotdog vendor named Dion Johnson assaulted and, on
18 information and belief, stabbed Plaintiff's brother, Ricky Washington.
19
20 14. Plaintiff intervened to protect his brother, and in an effort to protect
21 himself from the knife-wielding vendor, Plaintiff punched Dion Johnson.
22
23 15. Plaintiff thereafter proceeded to prepare to get onto his motorcycle to
24 leave the area.
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1 16. While Plaintiff was preparing to remove himself from the area, and prior
2 to getting onto his motorcycle, City of Seattle police officers, including
3 Defendants Smith and Agate, thereafter took Plaintiff to the ground and
4 used excessive force via use of blunt force trauma to detain him while he
5 was not posing as a risk of bodily injury, was not resisting the officers,
6 and while he was complying with their commands.
7

8 17. While Defendants Smith and Agate had Plaintiff on the ground,
9 Defendant Elliot and/or other officers used excessive force on Plaintiff by
10 shooting him with a Taser and otherwise using excessive force by
11 inflicting blunt force trauma on Plaintiff while he was on the ground and
12 not resisting detention by the officers.
13

14 18. Plaintiff was thereafter transported to Harborview Medical Center with
15 injuries inflicted by Defendants.
16

17 19. Any and all criminal charges filed against Plaintiff regarding the
18 aforementioned incident were dismissed.
19

20 20. At all times material to this action, the Seattle Police Department (SPD)
21 was engaged in a pattern and/or practice of using unnecessary and/or
22 excessive force, in violation of the Fourth Amendment to the United
23 States Constitution. On March 31, 2011, the United States Department of
24

Justice (DOJ) opened an investigation of the Seattle Police Department (SPD) pursuant to the Violent Crime Control and Law Enforcement Act of 1994, the Omnibus Crime Control and Safe Streets Act of 1968 and Title VI of the Civil Rights Act of 1964. Following the DOJ's investigation, on December 16, 2011, the DOJ found that SPD was engaged in a pattern or practice of excessive force that violates the Constitution and federal law.

CAUSES OF ACTION

A. VIOLATION OF PLAINTIFF'S CONSTITUTIONAL RIGHTS UNDER THE FOURTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION FOR EXCESSIVE FORCE (42 USC § 1983)

21. Defendants Smith, Agate, and Elliot's actions violated Plaintiff's constitutionally protected right to be free from excessive force under the Fourth and Fourteenth Amendments to the United States Constitution.

22. As a direct and proximate result of Defendants' conduct, Plaintiff sustained injuries and damages, discussed more fully hereinafter.

B. MUNICIPAL LIABILITY UNDER 42 USC § 1983

23. At all times material to this action, the Seattle Police Department (SPD) was engaged in a pattern and/or practice of using unnecessary and/or

1 excessive force, in violation of the Fourth Amendment to the United
2 States Constitution. Deficiencies in the SPD's training, policies, and
3 oversight with regard to the use of force contributed to the constitutional
4 violations regarding the pattern and/or practice of using excessive force.
5 At all times material to this action, SPD officers lacked adequate training
6 and/or policies on when and how to force consistent with the Fourth
7 Amendment. Moreover, at all times material to this action, SPD
8 supervisors failed to meet their responsibility to provide oversight of the
9 use of force by individual officers. Moreover, at all times material to this
10 action, command staff at the SPD did not adequately provide supervisors
11 with clear direction or expectations of how to supervise the use of force.
12 See Investigation of the Seattle Police Department. United States
13 Department of Justice, Civil Rights Division. Dec. 16, 2011.
14 www.justice.gov/crt/about/spl/seattlepd.php.

- 18 24. The conduct of Defendants Smith, Agate, and Elliot conformed to policy,
19 custom, or practice of Defendant City of Seattle and violated Plaintiff's
20 constitutional rights under the United States Constitution, including but
21 not limited to the Fourth and Fourteenth Amendments.
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1 25. The SPD and the City of Seattle were deliberately indifferent to the needs
2 of the community (including Plaintiff) to be free from excessive force by
3 SPD officers (including Defendants Smith, Agate, and Elliot) and
4 violated Plaintiff's constitutional rights under the United States
5 Constitution, including the Fourth and Fourteenth Amendments.
6

7 26. As a result of this conduct, Defendants, and each of them, caused
8 injuries and damages to Plaintiff, as discussed more fully below.
9

10 C. ASSAULT & BATTERY

11 27. Upon belief, Defendants Smith, Agate, Elliot, and John Does 1-5
12 threatened to and did use unlawful force against Plaintiff.

13 28. The acts of said Defendants were made with intent to cause harmful or
14 offensive contact or an apprehension by Plaintiff of such contact.
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16 29. Defendants Smith, Agate, and Elliot's conduct toward Plaintiff
17 constitutes assault and battery.

18 30. As a direct and proximate result of said Defendants conduct, Plaintiff
19 sustained injuries and damages, discussed more fully hereinafter.
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1 D. TORTIOUS CONDUCT

2 31. At all times material hereto, Plaintiff was owed duties of care by
3 Defendants, and each of them, including, but not by way of limitation,
4 those duties include one or more of the following:
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6 a. The duty to be free from excessive restraint, detention and force
7 without legal authority; and/or,

8 b. The duty of City of Seattle, agents and employees to act and
9 exercise the degree of care as others would act and exercise in the
10 same or similar circumstances.
11

12 32. Defendants' conduct constitutes tortious conduct, gross negligence and/or
13 negligence under the laws of the State of Washington.

14 33. Upon belief, Defendants Smith, Agate, Elliot, and John Does 1-5's
15 tortious conduct was committed under color of law and within the course
16 and scope of their employment with Defendant City of Seattle.
17 Defendant City of Seattle is vicariously liable for the tortious conduct of
18 its police officers, including Defendants Smith, Agate, Elliot, and John
19 Does 1-5, under the doctrine of respondent superior.
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21 34. On belief, Defendant City of Seattle negligently trained, retained, and
22 supervised Defendants Smith, Agate, Elliot, and John Does 1-5.
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1 35. As a direct and proximate result of Defendants' conduct, Plaintiff
2 sustained injuries and damages, discussed more fully hereinafter.

3 INJURIES RECEIVED

4 36. As a direct and proximate result of the facts as alleged herein, Plaintiff
5 sustained personal injuries, including but not limited to the loss of
6 consciousness, head and facial injuries, torso and back injuries, injuries
7 caused by Taser impacts, shoulder injuries, and other injuries to the mind
8 and body.

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10 37. As a further direct and proximate result of the facts as alleged herein,
11 Plaintiff has suffered and will in the future continue to suffer the loss of
12 enjoyment of life, pain, mental anguish, mental injury and suffering.

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14 38. As a further direct and proximate result of the facts as alleged herein,
15 Plaintiff has suffered and will in the future continue to suffer the loss of
16 income.

17
18 39. As a further direct and proximate result of the facts as alleged herein,
19 Plaintiff is entitled to damages in an amount to be proven at the time of
20 trial.

21 EXPENSES INCURRED

22 40. As a direct and proximate result of the facts as alleged herein, Plaintiff
23 has incurred, and may incur in the future, medical expenses and other
24

1 out-of-pocket expenses associated with these injuries, the amount of
2 which to be proven at the time of trial.

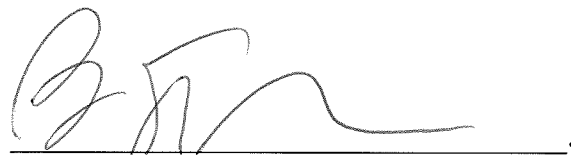
3 PRAYER FOR RELIEF

4 Plaintiff, Nathaniel Washington, requests a judgment against Defendants,
5 and each of them, jointly and severally, as follows:
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- 7 A. General damages in an amount to be determine at trial.
8 B. Special damages in an amount to be determined at trial.
9 C. Punitive and exemplary damages in an amount deemed just and
10 reasonable as provided by law.
11 D. Plaintiff's reasonable attorney fees and costs, pursuant to 42 USC §1988,
12 or as otherwise provided by law.
13 E. For such other and further relief as the court deems just and equitable.
14 F. Plaintiff requests that a jury hear this matter.
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16 DATED this 29th day of August, 2013.
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18 PAUKERT & TROPPEMANN, PLLC
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21 _____
22 BREEAN L. BEGGS, WSBA #20795
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